

BILL LOCKYER, Attorney General  
of the State of California  
TAN N. TRAN, State Bar No. 197775  
Deputy Attorney General  
California Department of Justice  
300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-6793  
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE  
PHYSICAL THERAPY BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2005 64281

Matthew Alan Hertel  
Post Office Box 3466  
Running Springs, California 92382

**A C C U S A T I O N**

Physical Therapist Assistant No. AT 6704,  
Respondent.

Complainant alleges:

**PARTIES**

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as Executive Officer of the Physical Therapy Board of California. ("Board").
2. On or about June 25, 2004, the Board issued Physical Therapist Assistant License Number AT 6704 to Matthew Alan Hertel ("Respondent"). This license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2007, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
4. Section 2602 of the Code states: "The Physical Therapy Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter

1 5.7, the Physical Therapy Practice Act].”

2 5. Section 2609 of the Code states: “The board shall issue, suspend, and  
3 revoke licenses and approvals to practice physical therapy as provided in this chapter.”

4 6. Section 2660 of the Code states in pertinent part:

5 “The board may suspend...or revoke, or impose probationary conditions upon any  
6 license, certificate, or approval issued under this chapter for unprofessional conduct that  
7 includes, but is not limited to, one or any combination of the following causes:

8 “ . . .

9 “(d) Conviction of a crime which substantially relates to the qualifications,  
10 functions, or duties of a physical therapist or physical therapy assistant. The record of  
11 conviction or a certified copy thereof shall be conclusive evidence of that conviction.”

12 “...

13 “(i) Conviction of a violation of any of the provisions of this chapter or of the  
14 State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or  
15 assisting in or abetting the violating of, or conspiring to violate any provision or term of this  
16 chapter or of the State Medical Practice Act.”

17 7. Section 2661 of the Code states:

18 “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
19 made to a charge of a felony or of any offense which substantially relates to the  
20 qualifications, functions, or duties of a physical therapist is deemed to be a conviction  
21 within the meaning of this article. The board may order the license suspended or  
22 revoked, or may decline to issue a license, when the time for appeal has elapsed, or the  
23 judgment of conviction has been affirmed on appeal or when an order granting probation  
24 is made suspending the imposition of sentence, irrespective of a subsequent order under  
25 Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of  
26 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing  
27 the accusation, information, or indictment.”

28 8. Section 2239 of the Code states in pertinent part:

1           “(a) The use or prescribing for or administering to himself or herself, of any  
2           controlled substance; or the use of any of the dangerous drugs specified in Section 4022,  
3           or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the  
4           licensee, or to any other person or to the public ... or any combination thereof, constitutes  
5           unprofessional conduct. The record of the conviction is conclusive evidence of such  
6           unprofessional conduct.

7           9.       Section 490 of the Code states:

8           “A board may suspend or revoke a license on the ground that the licensee has  
9           been convicted of a crime, if the crime is substantially related to the qualifications,  
10          functions, or duties of the business or profession for which the license was issued. A  
11          conviction within the meaning of this section means a plea or verdict of guilty or a  
12          conviction following a plea of nolo contendere. Any action which a board is permitted to  
13          take following the establishment of a conviction may be taken when the time for appeal  
14          has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order  
15          granting probation is made suspending the imposition of sentence, irrespective of a  
16          subsequent order under the provisions of Section 1203.4 of the Penal Code.”

17          10.     California Code of Regulations, Title 16, section 1399.20, states:

18          “For the purposes of denial, suspension, or revocation of a license, pursuant to  
19          Division 1.5 (commencing with Section 475) of the code, a crime or act shall be  
20          considered to be substantially related to the qualifications, functions or duties of a person  
21          holding a license under the Physical Therapy Practice Act if to a substantial degree it  
22          evidences present or potential unfitness of a person to perform the functions authorized  
23          by the license in a manner consistent with the public health, safety, or welfare. Such  
24          crimes or acts shall include but not be limited to the following:

25               “(a) Violating or attempting to violate, directly or indirectly, or assisting in or  
26               abetting the violation of, or conspiring to violate any provision or term of the Physical  
27               Therapy Practice Act.”

28               “...

1 “(c) Violating or attempting to violate any provision or term of the Medical  
2 Practice Act.”

3 11. Section 495 of the Code states:

4 “Notwithstanding any other provision of law, any entity authorized to issue a  
5 license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder  
6 thereof, for any act that would constitute grounds to suspend or revoke a license or certificate.  
7 Any proceedings for public reproof, public reproof and suspension, or public reproof and  
8 revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of  
9 Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate  
10 holder under the jurisdiction of the State Department of Health Services, in accordance with  
11 Section 100171 of the Health and Safety Code.”

#### 12 COST RECOVERY

13 12. Section 2661.5 of the Code states in pertinent part:

14 "(a) In any order issued in resolution of a disciplinary proceeding before the  
15 board, the board may request the administrative law judge to direct any licensee found guilty of  
16 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of  
17 the investigation and prosecution of the case."

18 "..."

19 “(d) In any judicial action for the recovery of costs, proof of the board’s decision  
20 shall be conclusive proof of the validity of the order of payment and the terms of payment.”

#### 21 CAUSE FOR DISCIPLINE

##### 22 (Conviction of a Crime)

23 13. Respondent is subject to disciplinary action under sections 2660(d)(i),  
24 2661, 2239(a), 490 of the Code, and California Code of Regulations, Title 16, section 1399.20,  
25 subdivision (a), in that he was convicted of a crime substantially related to the qualifications,  
26 functions or duties of a physical therapy assistant. The circumstances are as follows:

27 A. On March 22, 2005, a criminal pre-trial proceeding against Respondent in  
28 the matter of *People v. Matthew Alan Hertel*, in Superior Court, San Bernardino County,

1 Case Number TSB115532, commenced charging him with two offenses: Violation of  
2 Vehicle Code sections 23152(a) (Driving Under the Influence) and 23152(b) (Per Se  
3 Violation, 0.08 percent or more), both misdemeanors.

4 B. On March 22, 2005, respondent was convicted pursuant to a plea  
5 agreement of misdemeanor DUI by pleading guilty/nolo contendere to violating Vehicle  
6 Code Section 23152 (b) which states, "It is unlawful for any person who has 0.08 percent  
7 or more, by weight, of alcohol in his or her blood to drive a vehicle."

8 C. After the plea agreement, Respondent was placed on probation for three  
9 years, ordered to pay a fine of \$1,474, had his driver's license restricted for 90 days, and  
10 was ordered to enroll in an Alcohol 1<sup>st</sup> Offender program by May 15, 2005, and to complete said  
11 program by December 31, 2005.

12 D. The facts and circumstances surrounding this offense are as follows:

13 On or about August 22, 2004, a San Bernardino police officer stopped a vehicle  
14 Respondent was driving for failure to yield for a stop sign. The police officer spoke to  
15 Respondent and observed objective symptoms of intoxication. Respondent informed the police  
16 officer that he had consumed alcoholic beverages. The police officer requested CHP response to  
17 conduct a DUI investigation.

18 After failing a series of field sobriety tests, Respondent was arrested for violation of  
19 Vehicle Code Section 23152 (a). Respondent consented to a breath test and was transported to  
20 the CHP/Arrowhead office where he took a breath test. The results revealed that Respondent had  
21 a .12% blood alcohol content, well over the legal maximum. Respondent was subsequently  
22 booked for violations of Vehicle Code Sections 23152(a)(b).

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PRAYER

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WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board issue a decision:

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1. Revoking or suspending Physical Therapist Assistant License Number AT 6704 issued to Matthew Alan Hertel.

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2. Ordering him to pay the Physical Therapy Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of monitoring.

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3. Ordering a public reproof of Matthew Alan Hertel pursuant to Section 495 of the Code.

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4. Taking such other and further action as deemed necessary and proper.

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DATED: March 30, 2006

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Hertel Accusation.wpd

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Original Signed By:  
STEVEN K. HARTZELL  
Executive Officer  
Physical Therapy Board of California  
State of California  
Complainant